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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,041	11/21/2001	Marcellus D. Chrishon	00-1274	3631

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT PAPER NUMBER

3764

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/991,041

Applicant(s)

CHRISHON, MARCELLUS D.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☒ Claim(s) 11 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20011121.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:
on page 10, line 26, "heal" presumably should be changed to --heel--.
Appropriate correction is required.

Claim Objections

2. Claims 11 and 19 are objected to because of the following informalities:
in claim 11, line 2, "heal" presumably should be changed to --heel--;
in claim 19, line 32, "said second body member" presumably should be changed to --a second body member--;
in claim 19, line 43, "said third body member" presumably should be changed to --a third body member--;
in claim 19, line 67, "said fourth body member" presumably should be changed to --a fourth body member--, and "heal" presumably should be changed to --heel--; and
in claim 19, line 74, "said fifth body member" presumably should be changed to --a fifth body member--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites numerous body members, but it is not clear whether each

body member includes a plurality of pockets with flaps and a plurality of weights for selective insertion into those pockets. It is unclear from the claim whether the second body member includes pockets and weights. Presumably, the second body member includes a plurality of pockets with flaps and weights for selective insertion into the pockets.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by *Kolka* (US Pat. 4,180,261). *Kolka* discloses an exercise system comprising a body member 19 having an upper edge and a lower edge. A plurality of pockets 26 are coupled to the body member and include flaps 27 for securing a front panel of the pockets to selectively retain a plurality of weight members 29. The body member is adapted to fit a thigh of a user, and thus, when worn, has an inner taper from the upper edge to the lower edge. A pair of support straps 20,21 are coupled to the body member with a first strap 20 proximate the upper edge of the body member and a second strap 21 proximate the lower edge. Each strap is releasably coupled to itself by having a free end passed through a buckle at an opposite end.

6. Claims 1 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by *Winston* (US Pat. 4,838,546). *Winston* discloses an exercise system comprising a substantially planar body member 16 having first and second ends, each end with a respective hook and loop fastener material 42,44. A plurality of pockets 24 are coupled to the body member for selectively receiving a plurality of weight members 12. The pockets include flaps 34 for securing a front panel of the pockets to retain the weights within the pockets. The body member includes a taper from one edge to the opposite edge (Figs. 2 and 3) with the pockets spanning the length between the opposing edges such that pockets are positioned proximate each edge.

7. Claims 1 and 13-17 are rejected under 35 U.S.C. 102(e) as being anticipated by *Franco-Sion* (US Pat. 6,557,176 B2). *Franco-Sion* discloses an exercise system comprising a body member comprising a back panel and a front panel formed to have a pair of arm openings 26,28, a head opening 52 and a torso opening. A plurality of pockets 70 are positioned on the front and back panels and include flaps 64 for securing to a front panel of the pockets. A plurality of weights 78 are selectively inserted into the pockets. A plurality of pockets 60,68 are positioned on the back panel between the arm openings; a plurality of pockets 72,74 are positioned on the back panel below the arm openings; a plurality of pockets 62,66 are positioned on the front panel between the arm openings; and a plurality of pockets 70,76 are positioned on the front panel below the arm openings.

8. Claims 1, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by *Biggs, Jr. et al.* (US Pat. 3,306,610). *Biggs, Jr. et al.* discloses an exercise system comprising a body member 11 having a leg opening, a heel opening and a toe opening. A plurality of pockets 61 are coupled to the body member and include flaps 25 for securing to a front panel of the pockets. A plurality of weight members are selectively insertable into the pockets. The pockets are positioned so that they may be positioned above the ankle of a user.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Jackson, Jr.* (US Pat. 3,759,510). *Jackson, Jr.* discloses an exercise system comprising a plurality of body members adapted for snugly fitting around a plurality of body portions of a user. One of the body members 8 is adapted to fit the forearm of a user and includes a trailing edge and a leading edge. A plurality of pockets 70 are positioned around the circumference of the body member (col. 3, lines 42-43) and are positioned proximate the trailing edge and the leading edge (Fig. 1). Weight members 72 are selectively inserted into the pockets. A pair of ties are provided at the leading edge and the trailing edge to secure the body member to the

user's forearm. As the body member is adapted for fitting a forearm of a user, the body member tapers from the trailing edge to the leading edge.

Jackson, Jr. does not disclose the pockets having flaps for securing to a front panel of the pockets (claim 1); and straps coupled to the body member proximate the trailing and leading edges (claim 8) with a buckle at one end of each strap (claim 9) so that the straps can be cinched back upon itself for securement of the body member to the user's body.

Spletzer discloses an exercise system for attachment to a user's body and includes strap 82,122,132 for securing a plurality of weight pockets 133,161 to the user's limbs. The weight pockets include a flap 135,163 for securing to the front panel of the pocket. It is well known in the exercise art to use flaps on a weight pocket to retain weights within a weight pocket to prevent their uncontrolled movement. The straps have a buckle at one end and hook and loop fasteners on the other such that the straps are extended through a respective buckle and cinched back and secured to itself to ensure securement of the weight pockets to the limb of the user. This form of strap is also well known in the exercise art for securing things to a user's body permitting adjustment for different user's body dimensions.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pockets of *Jackson, Jr.* with flaps, since *Spletzer* teaches that flaps secure weights (col. 29, lines 61-63) and allow for adjusting the degree of difficulty of the exercise by permitting a change in weight (col. 28, lines 43-47). It also would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the ties of *Jackson, Jr.* with the straps of *Spletzer*, since the straps are a well known

equivalent in the exercise art for adjustably securing exercise equipment to a variety of different users having varying dimensions (col. 28, lines 48-67).

11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Kolka* (US Pat. 4,180,261) in view of *Spletzer* (US Pat. 6,039,677). *Kolka* and *Spletzer* have been discussed above, and such discussion is incorporated herein. *Kolka* discloses the invention as claimed except for the pair of straps being cinched back and secured to itself. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the buckle and straps of *Kolka* with the straps of *Spletzer*, since the straps are a well known equivalent in the exercise art for adjustably securing exercise equipment to a variety of different users having varying dimensions (col. 28, lines 48-67).

12. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Franco-Sion* (US Pat. 6,557,176 B2) in view of *Cook* (US Pat. 6,554,752 B2). *Franco-Sion* has been discussed above, and such discussion is incorporated herein. *Franco-Sion* discloses the invention as claimed except for the weight members comprising a flexible material. *Cook* discloses weight members made of flexible material comprising a composite of thermoplastic elastomer and solid particles of metal or ceramic (col. 10, lines 22-36) with a durometer preferably of less than 50 shore A. A softer weight would provide greater comfort against a user's body than a stiffer weight. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise system of *Franco-Sion* with

the softer weights of *Cook*, in order to provide greater comfort to a user's body engaging the weight.

13. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Jackson, Jr.* (US Pat. 3,759,510) in view of *Spletzer* (US Pat. 6,039,677), *Winston* (US Pat. 4,838,546) and *Biggs, Jr. et al.* (US Pat. 3,306,610). *Jackson, Jr.* discloses an exercise system wherein an exercise garment is worn comprising a plurality of weighted body members adapted to fit snugly on various portions of a user's body, including the thighs, ankles, forearms, foot and torso. The weighted body members provide selectable degrees of resistance to muscle action. The various body members can be used separately or in various combinations. Each body member comprises a plurality of pockets for selectively receiving a plurality of weight members. A first body member 16 is inwardly tapered from an upper edge to a lower edge for fitting a thigh of a user. The weight members may be particulate so as to conform to the user's body. A third body member 8 inwardly tapers from a trailing edge to a leading edge for fitting a forearm of a user. A pair of straps 44,46 are coupled to the third body member to secure the body member to the forearm. Weight pockets are located around the circumference of the forearm and proximate the leading edge and the trailing edge. A fifth body member 6 has a pair of arm openings, a head opening and a torso opening for fitting over the torso of a user. Back and front panels of the fifth body member each carry weight pockets between the arm openings and below the arm openings, though not directly below the arm openings since that would inhibit freedom of arm movement.

Jackson, Jr. does not disclose a flap secured to a front panel of each pocket; the first member having a pair of straps positioned proximate the upper and lower edges with a buckle at one end of each strap for cinching back of the strap for securing to itself; a second body member having first and second ends with respective hook and loop fastener portions for securing the second body member around an ankle of a user; the straps of the third body member each having a buckle at one end for cinching back of a respective strap for securing to itself; and a fourth body member having a leg opening, a heel opening and a toe opening such that foot of a user can be inserted to position the fourth body member over the ankle of a user, the weight pockets being positioned to be above the ankle of a user.

Spletzer, Winston and Biggs, Jr. et al. have been discussed above, and such discussion is incorporated herein. *Spletzer* teaches that flaps secure weights (col. 29, lines 61-63) and allow for adjusting the degree of difficulty of the exercise by permitting a change in weight (col. 28, lines 43-47). *Spletzer* also discloses straps well known in the exercise art as for adjustably securing exercise equipment to a variety of different users having varying dimensions (col. 28, lines 48-67). *Winston* discloses a body member having hook and loop fastener portions at first and second ends for securing the body member and weights around the ankle of a user. *Biggs, Jr. et al.* discloses a body member having a leg opening, a heel opening and a toe opening such that a foot of a user can be inserted to position the body member over the ankle of a user with weight pockets located above the ankle of a user.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the body members of *Winston* and *Biggs, Jr. et al.* into the exercise system of *Jackson, Jr.*, in order to provide additional equivalent weighted body

garments for exercising the various portions of a user's body by direct loading. It also would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pockets of *Jackson, Jr.* with the flaps of *Spletzer*, in order to further secure the weights and permit adjusting of the weights to a desired degree of difficulty. It would have been further obvious to one having ordinary skill in the art at the time the invention was made provide the first and third body members of *Jackson, Jr.* with the cinch straps of *Spletzer*, since the straps are a well known equivalent in the exercise art for adjustably securing exercise equipment to a variety of different users having varying dimensions (col. 28, lines 48-67) and would provide added securement when the body members are used independently.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Waller (US Pat. 2,241,833), *Rosenbaum* (US Pat. 3,278,184), *Prince* (US Pat. 4,384,369), *Nosek* (US Pat. D278,455), *Cebo-Johnson* (US Pat. 5,553,322), *Plasco* (US Pat. D390,338), *Raines* (US Pat. 5,937,441) and *Cavallera* (WO 02/26330 A1) disclose various exercise systems comprising body members fitted to a user's body and supporting a plurality of weighted pockets.

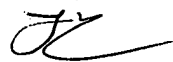
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865 until Nov. 2, 2004. After Nov. 2, the new telephone number will be (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891 until Nov. 2, 2004. After Nov. 2, the new informal fax number will be the same as my telephone number, (571) 272-4976. The facsimile number for submitting all formal correspondence at this time is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on 703-308-2675.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Victor K. Hwang
September 27, 2004


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9/29/04